

Regular Session, 2010

SENATE BILL NO. 106

BY SENATOR RISER

WORKERS' COMPENSATION. Provides relative to workers' compensation. (gov sig)

AN ACT

To amend and reenact R.S. 23:1123, 1172.2(E), 1201(A), and to repeal R.S. 23:1201.1, relative to workers' compensation; to provide for an examination of an injured employee when certain disputes arise; to provide for the prompt reporting of certain information relative to payment of workers' compensation premiums which may be considered false, fraudulent, or misleading; to provide for payors and insurers to make weekly indemnity payments by electronic funds transfer; to repeal provisions requiring workers' compensation indemnity payments be mailed; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1123, 1172.2(E), and 1201(A) are hereby amended and reenacted to read as follows:

§1123. Disputes as to ~~physical condition,~~ **capacity to work, or current medical treatment** of employee; examination under supervision of the director

If any dispute arises as to the condition of the employee, **capacity to work, or the current medical treatment for the employee,** the director, upon application of any

1 party, shall order an examination of the employee to be made by a medical
2 practitioner selected and appointed by the director. The medical examiner shall
3 report his conclusions from the examination to the director and to the parties and
4 such report shall be prima facie evidence of the facts therein stated in any subsequent
5 proceedings under this Chapter.

6 * * *

7 §1172.2. Unlawful practices

8 * * *

9 E.(1)(a) Any person, insurer, or self-insurance fund who has knowledge
10 of or who believes that a false, fraudulent, or misleading statement is knowingly
11 made or is knowingly omitted for the purpose of avoiding, delaying, or
12 diminishing the amount of payment of any workers' compensation premium
13 shall, within sixty days of notice of such statement or omission, send to the office
14 of workers' compensation administration, on a form prescribed by the director,
15 the information requested and such additional information as may be requested
16 by the office of workers' compensation administration.

17 (b) The office of workers' compensation administration shall review
18 such reports and select such acts of misrepresentation as, in its judgment, may
19 require further investigation.

20 (c) The office of workers' compensation administration shall then cause
21 an independent examination of the facts surrounding such acts to be made to
22 determine the extent, if any, to which fraud, deceit, or intentional
23 misrepresentation of any kind exists.

24 (d) The office of workers' compensation administration shall report any
25 alleged violations of law which its investigations disclose to the appropriate
26 licensing agency and prosecuting authorities having jurisdiction with respect to
27 such violation.

28 (2) No person or entity acting without malice, fraudulent intent, reckless
29 disregard for the truth, or bad faith, shall be subject to civil liability for libel, slander,

1 or any other relevant tort, and no civil cause of action of any nature shall exist
2 against such person or entity by virtue of the filing of reports or furnishing of other
3 information, either orally or in writing, relative to a violation by any employer of the
4 provisions of this Section.

5 ~~(2)~~**(3)** The grant of immunity provided by this Subsection shall not abrogate
6 or modify in any way any statutory or other privilege or immunity otherwise enjoyed
7 by such person or entity.

8 ~~(3)~~**(4)** Any person or entity entitled by this Subsection to immunity from
9 civil liability shall also be entitled to an award of attorney fees and costs if they are
10 the prevailing party in a civil suit and the party bringing the action was not
11 substantially justified in doing so. For purposes of this Section, a proceeding is
12 "substantially justified" if it had a reasonable basis in law or fact at the time it was
13 initiated.

14 * * *

15 §1201. Time and place of payment; failure to pay timely; failure to authorize;
16 penalties and attorney fees

17 A.**(1)** Payments of compensation under this Chapter shall be paid as near as
18 may be possible, at the same time and place as wages were payable to the employee
19 before the accident; however, when the employee is not living at the place where the
20 wages were paid, or is absent therefrom, such payments shall be made by mail, upon
21 the employee giving to the employer a sufficient mailing address. However, a longer
22 interval, not to exceed one month, may be substituted by agreement without approval
23 of the director. An interval of more than one month must be approved by the
24 director.

25 **(2) Notwithstanding the requirement to make payments by mail in**
26 **Paragraph (1) of this Subsection, electronic transfer of funds, including but not**
27 **limited to direct deposit or use of a debit card, is an appropriate method of**
28 **payment of compensation under this Chapter. Where a payor or insurer elects**
29 **to issue debit cards and makes weekly payments by way of electronic funds**

transfers, an injured worker represented by an attorney may elect to have his weekly indemnity check deposited directly into his attorney's trust account.

Where such an election is made, the payor or insurer shall provide notice by way of email only to the injured workers' attorney containing a list of all claims and amounts included in the direct deposit within forty-eight hours of the direct deposit.

* * *

Section 2. R.S. 23:1201.1 is hereby repealed.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Mary Dozier O'Brien.

DIGEST

Riser (SB 106)

Present law provides for the duty of the director to order an independent medical examination by a medical practitioner selected and appointed by the director when a dispute arises as to the condition of an injured employee.

Proposed law retains present law and further requires the director, upon application of any party, to order an independent medical examination when a dispute arises as to the injured employee's capacity to work or his current medical treatment.

Present law provides that no person or entity acting without malice, fraudulent intent, reckless disregard for the truth, or bad faith shall be liable to another by virtue of the filing of reports or furnishing other information relative to a violation by an employer of the provisions of the present law.

Proposed law retains present law but places an affirmative burden on any person, insurer, or members of self-insurance fund who believes that a false, fraudulent, or misleading statement has been knowingly made or has been knowingly omitted with the purpose of affecting the payment of any workers' compensation premium.

Proposed law further requires that such an entity shall report such statement or omission within 60 days to the office of workers' compensation administration, at which time the office shall review such reports and determine which reports merit further investigation.

Proposed law requires the office to provide an independent examination of the facts surrounding the report. Any alleged violations of law disclosed by an independent examination of the facts shall be reported to the appropriate licensing agency and the proper

prosecuting authority.

Present law states that workers' compensation payments shall be made by mail.

Proposed law retains the mailing of payments as permissive, but allows the electronic transfer of funds by methods including but not limited to direct deposit and debit cards.

Proposed law provides that if the payer or insurer elects to issue debit cards, the injured worker may opt to have his weekly indemnity payment paid directly into his attorney's trust account. Proposed law provides that if such an election is made, the payer or insurer shall notify the attorney of the deposit and shall list all claims and amounts included in the deposit within 48 hours of each deposit.

Present law requires that indemnity payments be mailed to the recipient.

Proposed law repeals that mailing requirement.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 23:1123, 1172.2(E), and 1201(A); repeals R.S. 23:1201.1)